

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**EDWARD H. LAVERENTZ**

Claimant

VS.

**SEDGWICK COUNTY**

Self-Insured Respondent

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Docket No. 1,017,534

**ORDER**

Respondent requests review of the October 13, 2004 Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

After holding an informal status conference with the parties the Administrative Law Judge (ALJ) ordered the respondent to pay for claimant's speech therapy provided by Dr. Thomas C. Kryzer. A record was not requested nor made of the status conference.

The respondent requests review of whether the claimant, in the absence of a hearing and presentation of evidence, has sustained his burden of proof that his medical condition is a result of his work-related accident. Respondent further argues the ALJ exceeded his jurisdiction awarding benefits to the claimant in the absence of sufficient evidence that his condition was the result of his work-related accident.

Claimant argues the Board does not have jurisdiction to review this Order because it is an order for medical treatment. Claimant further notes that there was no objection to the status conference and no argument regarding compensability of the claim and if such objections had been raised the ALJ would have discontinued the status conference and scheduled the matter for hearing.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The respondent's brief indicates and the administrative file confirms that there is no transcript of proceedings. The ALJ's October 13, 2004 Order was entered after a discussion between court and counsel apparently regarding additional medical treatment for the claimant. There is no indication that a record was requested by any party at the time. It appears from the arguments in the parties' briefs to the Board that a court-ordered independent medical examination was discussed. In addition, there is no stipulation by counsel concerning the substance of the evidence, arguments or testimony, if any, offered to the ALJ upon which his decision was based.

K.S.A. 44-555c(a) confers upon the Board the authority to review "all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. **The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.**" (Emphasis added).

The standard of review for the Board in a workers compensation case is the same as that conferred under prior law upon the district court. This standard was restated in *Miner*<sup>1</sup>, as follows:

The standard of review in workers compensation cases is well settled. Kansas case law allows the district court a trial de novo on the record and, although the court is bound by the agency record, the district court has the jurisdiction and the duty to make an independent adjudication of the facts and the law. *Reeves v. Equipment Service Industries, Inc.*, 245 Kan. 165, 171, 176, 777 P.2d 765 (1989). The district court has full power to grant or refuse compensation and to increase or diminish any award as justice requires. See *Gawith v. Gage's Plumbing & Heating Co., Inc.*, 206 Kan. 169, 171, 476 P.2d 966 (1970).

In this case, there is no agency record for the Board to review. K.S.A. 44-501(a) provides that the burden of proof is upon the claimant to establish his or her right to an award of compensation. However, it is the duty of the aggrieved party to request a record for appellate review purposes. In the absence of a record, the Board has no way of ascertaining what support there is for the ALJ's factual findings and legal conclusions, nor is there any feasible method for conducting an independent review of the evidence. We simply have not been furnished with any evidence from which the issues presented can be reasonably resolved.

Herein, the record provided to the Board consists of the parties' briefs. Briefs assist the Board in defining and focusing on the pertinent facts and law that a party considers

---

<sup>1</sup> *Miner v. M. Bruenger & Co.*, 17 Kan. App. 2d 185, 188, 836 P.2d 19 (1992).

significant to the determination of the appeal. But a brief is not evidence. It is simply a document that states a party's position on the facts and law pertaining to a specific issue.

The Board has the statutory authority to remand this matter to the ALJ with directions to put into evidence that testimony which counsel represented would be forthcoming if a hearing were held and upon which the ALJ based his decision. However, there is no indication in this case that either party was denied the ability to make a record. The failure to request a record at the hearing constitutes a waiver of the right to object to the lack of a record.<sup>2</sup>

As we have stated, the responsibility for making a record rests with the aggrieved party. In the absence of such a request having been made, the Board considers it inappropriate to remand the matter for such proceedings to be conducted at this juncture. The respondent's application for review should instead be dismissed for failure to furnish an adequate record, thereby making review by the Board impossible.

**WHEREFORE**, it is the finding, decision and order of the Board that the respondent's application for review is hereby dismissed and the Order of Administrative Law Judge John D. Clark dated October 13, 2004, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of November 2004.

\_\_\_\_\_  
BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant  
Gary K. Albin, Attorney for Respondent  
John D. Clark, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

---

<sup>2</sup> *In re Marriage of Soden*, 251 Kan. 225, 834 P.2d 358 (1992).